have had actual knowledge of the employee's inefficiency;[19] but it is conceived that, to be properly admissible for this last purpose, the number of acts should be much larger than for the former, in order that the possibility that none of them was brought to the master's attention be eliminated. The court seems, however, to have considered that the inquiry of primary importance was whether the employer should, by an exercise of reasonable care, have known of its servant's incompetency. Under this theory of the case, proof even of a comparatively small number of instances of negligent conduct would be requisite.[20] It seems, therefore, that under the circumstances the court properly held the evidence admissible.[21]

THE NECESSITY OF PRIVITY IN ADVERSE POSSESSION UNDER THE STATUTE OF LIMITATIONS.—At common law mere possession was protected against all the world except the true owner,[1] and when the latter's claim was barred this possession ripened into a full and indefeasible title.[2] From the first the theory of the English Statutes of Limitations was that the owner's right of action was destroyed unless he could show seisin since a fixed date,[3] or, later, possession within a certain number of years. The law looked to the demerit of the claimant who had long neglected his claim, rather than to the character of the occupancy meanwhile, or the merit of the possessor.[4] Since, however, lack of possession on the part of the owner was not sufficient to set the statute running,[5] an actual ouster was necessary, and the possession must have been adverse to the owner's title.[6] Given, then, an ouster and adverse possession, it follows from the above theory of the statute, that after the lapse of the period of limitation a full title was vested in the occupant, subject to the action in ejectment of any intermediate occupant who had been ousted,[7] but totally irrespective of the number and connection of adverse possessions meantime.[8] It would seem, then, that the courts were not in strictness bound, under this theory, to require that for the running of the statute there should be unbroken continuity of adverse possession. The English cases decided under the statute of 21 Jac.

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[19]Shaw *v.* Chicago etc. Ry. Co. (1900) 123 Mich. 629.

[20]Stoll *v.* Daly Mining Co. (1899) 19 Utah 271; Pittsburgh etc. Ry. Co. *v.* Ruby (1871) 38 Ind. 294.

[21]Chapman *v.* Erie Ry. Co. (1874) 55 N. Y. 579; Baltimore & O. R. R. Co. *v.* Camp (1895) 65 Fed. 952.

[1]Doe *v.* Dyeball (1829) Moo. & M. 346; Asher *v.* Whitlock (1865) L. R. 1 Q. B. 1; Perry *v.* Clissold (1906) L. R. [1907] App. Cas. 73.

[2]Ames, Disseisin of Chattels 3 Harv. L. Rev. 318-321, and citations.

[3]3 Cruise Dig. 539.

[4]Ames, Disseisin of Chattels *supra* 318; Doe *v.* Carter (1846) 9 Q. B. 863.

[5]McDonnell *v.* McKinty (1847) 10 Ir. L. R. 514.

[6]Reading *v.* Royston (1701) 2 Salk. 423; Jackson *v.* Parker (N. Y. 1802) 3 Johns. Cas. 124.

[7]Asher *v.* Whitlock *supra.*

[8]Ames, Disseisin of Chattels *supra* 323-325; Doe *v.* Carter *supra.* See also Day *v.* Day (1871) L. R. 3 P. C. 751, 761.

1 c. 16, which is the model for the American statutes,[9] seem to be silent upon the subject, but this is perhaps to be expected, since in an old and densely populated country a break in continuity would be unlikely to occur.[10]

In America, on the other hand, in early times the existence of vast tracts of vacant land and the fluctuating character of the population must often have led to the occupation of land and its abandonment in a sense unknown to the common law.[11] Under such circumstances the requirement of continuity in adverse possession seems proper, and is, in fact, universally insisted on by the American courts. There is, however, considerable diversity as to what shall constitute the requisite continuity—as to when "tacking" shall be allowed. The doctrine of Massachusetts,[12] New York,[13] and Tennessee,[14] is that between successive adverse occupants there must be a privity of estate arising from some relation such as ancestor and heir or grantor and grantee. Some states hold, however, that a mere parol agreement is sufficient,[15] while others require only that there be no hiatus in the adverse possession.[16] South Carolina alone allows "tacking" only in the case of ancestor and heir.[17] If there is no hiatus, the courts of North Carolina[18] and Tennessee[19] will presume a grant from lapse of time; but this proceeds on a principle entirely distinct from the Statute of Limitations.[20] Of these doctrines, it would seem that the requirement of mere continuity, without privity, is nearest to the common law rule, and is much the same in practical effect, since as above indicated, in England such continuity, whether or not essential on strict theory, seems in fact to have resulted from circumstances. Moreover, this theory appears best to serve the purpose of the statutes, by most effectually quieting stale claims which, were privity required, might long survive to the detriment of the public good.[21] Further, the fiction of the revival of the owner's possession between successive disseisins, upon which the privity doctrine is based,[22] is a distortion of the true meaning of the terms possession and disseisin,[23] in cases where there is no hiatus in the adverse occupancy, and is quite inconsistent with the established doctrine that the dis-

[9]Ames, Disseisin of Chattels *supra* 321.

[10]See Taylor *v.* Burnsides (Va. 1844) 1 Gratt. 169.

[11]See Potts *v.* Gilbert (U. S. C. C. 1819) 3 Wash. 475.

[12]Sawyer *v.* Kendall (Mass. 1852) 10 Cush. 241.

[13]Jackson *v.* Leonard (N. Y. 1824) 9 Cow. 653.

[14]Marr *v.* Gilliam (Tenn. 1860) 1 Cold. 488.

[15]Cunninghan *v.* Patton (1847) 6 Pa. St. 355; McNeely *v.* Langan (1871) 22 Oh. St. 32; Crispen *v.* Hannovan (1872) 50 Mo. 536; Illinois Steel Co. *v.* Budzisz (1900) 106 Wis. 499.

[16]Shannon *v.* Kinney (Ky. 1817) 1 Marsh. 2; Fanning *v.* Wilcox (Conn. 1808) 3 Day. 258. And see Kipp *v.* Synod of Toronto (1873) 33 U. C. Q. B. 220.

[17]King *v.* Smith (S. C. 1838) Rice 10; Williams *v.* McAliley (S. C. 1840) Cheves 200.

[18]Davis *v.* McArthur (1878) 78 N. C. 357.

[19]Scales *v.* Cockrill (Tenn. 1859) 3 Head 432.

[20]Marr *v.* Gilliam *supra;* Reed *v.* Earnhart (N. C. 1849) 10 Ired. 516.

[21]Lewis *v.* Marshall (1831) 5 Pet. 470.

[22]Sawyer *v.* Kendall *supra.*

[23]Bouvier, Law Dictionary, titles "Possession," "Seisin," "Disseisin."

seisor's possession gives him a right of action in ejectment against one by whom he in turn has been ousted.[24] The requirement, then, of any privity beyond mere continuity seems unwarranted,[25] except on the supposition, which seems to suggest the only explanation of the privity doctrine, that the emphasis is now laid upon a long and meritorious possession rather than on the demerit of the claimant as at common law.

In a recent Michigan case, *Sheldon* v. *Mich. Cent. R. Co.* (1910) 126 N. W. 1056, the railroad fenced in only twenty to thirty feet of a right of way extending fifty feet on each side of the center line of its track. The remaining twenty to thirty feet was occupied for less than the statutory period by each of the successive owners of an adjoining tract, the tenancies of the last two alone amounting together to more than the statutory period. The whole right of way, however, was excepted in the conveyances from each to his successor. The possession of each occupant being adverse to the railroad's title,[26] there was no hiatus, and the court, being evidently bound by no authority in the state,[27] was free to adopt the better rule by declaring that the railway's claim was barred under the Statute of Limitations. The majority, however, assumed that privity was requisite, and held that as to the disputed strip there was in fact no such privity. In the words of a case cited in the majority opinion, the claimant, it would seem, showed that in fact, "the possession of the disputed strip was delivered to him as a part of the land sold and conveyed."[28] Upon the ground, then, that privity is not essential, and perhaps upon the further ground that if required it was in fact present, the decision seems to be open to criticism.

RIGHTS AND LIABILITIES OF THE UNDISCLOSED PRINCIPAL.—It is a fundamental principle of the law of contracts, that a promise from A to B, induced by a consideration, is enforceable only by B the promisee against A the promisor.[1] Yet if B was acting for a principal Y but did not disclose the fact of the agency, the law would allow Y to sue upon the contract in his own name;[2] and if A were likewise acting for an undisclosed principal X, Y might have his action against X to recover damages for the breach of the agreement made by A with B.[3] It is evident that this rule is inconsistent with the theory, that a party

[24]Asher *v.* Whitlock *supra;* Ames, Disseisin of Chattels *supra* 325, note.

[25]Ames, Disseisin of Chattels *supra.* 325.

[26]See Crary *v.* Goodman (1860) 22 N. Y. 170; Grube *v.* Wells (1871) 3 Gray Cas. 85, note.

[27]No authority is cited.

[28]Humes *v.* Bernstien (1882) 72 Ala. 546.

[1]Anson, Contracts (8th ed.) 275.

[2]Sullivan *v.* Schailor (1898) 70 Conn. 733; Buchanan *v.* Cleveland Linseed Oil Co. (1898) 91 Fed. 88; Prichard *v.* Budd (1896) 76 Fed. 710; Propeller Tow-Boat Co. of Savannah *v.* Western Union Telegraph Co. (1905) 124 Ga. 478. See Noel *v.* Atlas Portland Cement Co. (1906) 103 Md. 209.

This rule does not apply to sealed instruments. Van Dyke *v.* Van Dyke (1905) 123 Ga. 686.

[3]See Higgins *v.* Senior (1841) 8 Mees. & W. 834. Suits by the third party against the undisclosed principal were maintained in Lindeke Land Co. *v.* Levi (1899) 76 Minn. 364; Phillips *v.* International Text Book Co. (1904) 26 Pa. Super. Ct. 230; Greenberg *v.* Palmieri (1904) 71 N. J. L. 83; Kayton *v.* Barnett (1899) 116 N. Y. 625.